

APPENDIX A

**THE STANDARDS OF ETHICAL CONDUCT**

Standards of Ethical Conduct for Employees of the Executive Branch are found at 5 CFR Part 2635. The Standards of Ethical Conduct are detailed because they are intended to answer questions about the ethical conduct of more than a million individuals employed by more than 100 different Federal agencies. They contain many examples and will readily answer most ethical questions employees will have. The synopsis which follows has been prepared by the Office of Government Ethics to give employees enough familiarity with the contents of the regulations to recognize ethical issues when they arise and to assist in looking up relevant provisions in the regulations. Because the synopsis provides only a shorthand reference to lengthier provisions in the regulations, an employee must refer to the regulations themselves in resolving ethical issues that actually arise or may seek the advice of an agency ethics official.

**SYNOPSIS OF SUBPART A - GENERAL PROVISIONS**

THE PRINCIPLES OF ETHICAL CONDUCT. The following principles of ethical conduct apply to all officers and employees of the executive branch and many form the basis for specific standards set forth in the regulation.

Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

Employees shall not hold financial interests that conflict with the conscientious performance of duty.

Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

An employee shall not, except pursuant to the exceptions in subpart B, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

Employees shall put forth honest effort in the performance of their duties.

Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.

Employees shall not use public office for private gain.

Employees shall act impartially and not give preferential treatment to any private organization or individual.

Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those -- such as Federal, state and local taxes -- that are imposed by law.

Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or these Standards of Ethical Conduct.

#### BASIC CONCEPTS.

Employees shall apply the principles stated above in weighing the propriety of conduct not otherwise addressed in the regulations.

## **SYNOPSIS OF SUBPART B - GIFTS FROM OUTSIDE SOURCES**

BASIC PROHIBITION ON GIFTS FROM OUTSIDE SOURCES. An employee shall not solicit or accept a gift given because of his official position or from a prohibited source. A prohibited source is defined as any person, including any organization more than half of whose members are persons:

Seeking official action by his agency;

Doing or seeking to do business with his agency;

Regulated by his agency; or

Substantially affected by the performance of his duties.

DEFINITION OF A GIFT. The term "gift" includes almost anything of monetary value. However, it does not include:

Coffee, donuts and similar modest items of food and refreshments when offered other than as part of a meal;

Greeting cards and most plaques, certificates and trophies;

Prizes in contests open to the public;

Commercial discounts available to the general public or to all Government or military personnel; commercial loans, and pensions and similar benefits;

Anything paid for by the Government, secured by the Government under Government contract or accepted by the Government in accordance with a statute;

Anything for which the employee pays market value.

EXCEPTIONS. Subject to the limitations noted below, there are exceptions which will permit an employee to accept:

Unsolicited gifts with a market value of \$20 or less per occasion, aggregating no more than \$50 in a calendar year from any one source (this exception does not permit gifts of cash or investment interests);

Gifts when clearly motivated by a family relationship or personal friendship;

Commercial discounts and similar benefits offered to groups in which membership is not related to Government employment or, if membership is related to Government employment, where the same offer is broadly available to the public through similar groups, and certain benefits offered by professional associations or by persons who are not prohibited sources;

Certain awards and honorary degrees;

Gifts resulting from the outside business activities of employees and their spouses.

#### **SYNOPSIS OF SUBPART C - GIFTS BETWEEN EMPLOYEES**

BASIC PROHIBITION ON GIFTS BETWEEN EMPLOYEES. An employee shall not:

Give or solicit for a gift to an official superior; or

Accept a gift from a lower-paid employee, unless the donor and recipient are personal friends who are not in a superior-subordinate relationship.

DEFINITION OF A GIFT. The term "gift" has the same meaning as in subpart B. However, carpooling and similar arrangements are excluded where there is a proportionate sharing of the cost and effort involved.

DEFINITION OF AN OFFICIAL SUPERIOR. The term "official superior" includes anyone whose official responsibilities involve directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. The term is not limited to immediate supervisors but applies to officials up the supervisory chain.

EXCEPTIONS. Subject to a limitation on using any exception to coerce a gift from a subordinate, there are exceptions that:

On an occasional basis, including birthdays and other occasions when gifts are traditionally exchanged, permit giving and accepting:

Items other than cash aggregating \$10 or less per occasion;

Food and refreshments shared in the office;

Personal hospitality at a residence;

Appropriate hostess gifts; and

Leave sharing under OPM regulations.

On infrequent occasions of personal significance, such as marriage, and on occasions that terminate the superior-subordinate relationship, such as retirement, permit giving and accepting gifts appropriate to the occasion; and

Permit voluntary contributions of nominal amounts to be made or solicited for gifts of food and refreshments to be shared in the office or for group gifts on occasions such as marriage or retirement described in the preceding paragraph.

#### **SYNOPSIS OF SUBPART D - CONFLICTING FINANCIAL INTERESTS**

DISQUALIFYING FINANCIAL INTERESTS. Under the criminal conflict of interest statute, 18 U.S.C. 208, an employee is prohibited from participating in an official capacity in any particular matter in which, to his knowledge, he or certain other persons have a financial interest, if the particular matter will have a direct and predictable effect on his own or that person's financial interests.

APPLICABILITY. In addition to matters that affect his own financial interests, this prohibition applies to particular matters that affect the financial interests of:

The employee's spouse, minor child or general partner; or

Any person the employee serves as officer, director, trustee, general partner or employee.

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The prohibition also applies to particular matters that affect the financial interests of a person with whom the employee is negotiating for or has an arrangement concerning future employment.

However, this aspect of the statute is addressed more specifically in subpart F.

DISQUALIFICATION. Disqualification can be accomplished simply by not participating in the matter. Although an employee should notify the person responsible for his assignment of the need to disqualify, a written disqualification statement is necessary only if required by an ethics agreement or requested by an agency ethics official or the person responsible for the employee's assignment.

SOLUTIONS OTHER THAN DISQUALIFICATION. Disqualification is not required if the financial interest is the subject of one of the statutory waivers described in subpart D or if the employee has sold or otherwise divested the conflicting interest.

#### **SYNOPSIS OF SUBPART E - IMPARTIALITY IN PERFORMING OFFICIAL DUTIES**

CONSIDERATION OF CERTAIN PERSONAL AND BUSINESS RELATIONSHIPS. Even though his disqualification may not be required under subpart D, an employee should not participate in an official capacity in certain matters without first obtaining specific authorization if, in his judgment, persons with knowledge of the relevant facts would question his impartiality in those matters.

MATTERS COVERED. The matters covered include a particular matter involving specific parties if the employee knows that it is likely to affect the financial interests of a member of his household or that one of the following persons is a party or represents a party in the matter:

A person with whom the employee has or seeks a business or other financial relationship.

A member of the employee's household or relative with whom the employee has a close personal relationship;

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A person the employee's spouse, parent or child serves or seeks to serve as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

A person the employee has, in the past year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

An organization, other than a political party, in which the employee is an active participant.

DISQUALIFICATION. Disqualification can be accomplished in the same manner as when required under subpart D for disqualifying financial interests.

AUTHORIZATION TO PARTICIPATE. Notwithstanding the employee's determination that his impartiality would be questioned, the agency designee can authorize the employee to participate in the matter based on a determination that the Government's interest in the employee's participation outweighs the concern that a reasonable person would question the integrity of agency programs and operations. The authorization permitted by subpart E cannot be given, however, if the employee's disqualification is also required by subpart D.

OTHER APPLICATION OF THE PROCESS. Employees are urged to use the process set forth in subpart E to decide whether they should or should not participate in other matters in which their impartiality is likely to be questioned.

EXTRAORDINARY PAYMENTS FROM FORMER EMPLOYERS. An employee is disqualified for 2 years from participating in any particular matter in which his former employer is a party or represents a party if, prior to entering Federal service, that employer gave him an extraordinary payment in excess of \$10,000.

A routine severance and other payment made under an established employee benefits plan would not be an extraordinary payment.

There is authority to waive all or part of this disqualification requirement.

## **SYNOPSIS OF SUBPART F - SEEKING OTHER EMPLOYMENT**

DISQUALIFICATION WHILE SEEKING EMPLOYMENT. An employee is prohibited from participating in an official capacity in any particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a person with whom he is seeking employment. For this purpose, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services.

DEFINITION OF SEEKING EMPLOYMENT. The term "seeking employment" includes bilateral negotiations with another, mutually conducted with a view to reaching an agreement regarding possible employment. It also includes conduct short of negotiations, such as sending an unsolicited resume or other employment proposal. It can include employment contacts by or through an agent or intermediary. However, it does not include simply:

Rejecting an unsolicited employment overture;

Requesting a job application; or

Sending an unsolicited resume or other employment proposal to a person affected by performance of the employees duties only as a member of an industry or other discrete class.

Having once begun, an employee generally continues to be seeking employment until he or the prospective employer rejects the possibility of employment and all discussions end. However, an employee is no longer seeking employment with the recipient of his unsolicited resume or other employment proposal after two months have passed with no indication of interest in employment discussions from the prospective employer.

DISQUALIFICATION. Disqualification can be accomplished in the same manner as when required under subpart D for disqualifying financial interests.

SOLUTIONS OTHER THAN DISQUALIFICATION. If the employee's conduct in seeking employment amounts to negotiations, the employee can participate in the matter affecting his prospective employer only if granted an individual waiver described in subpart D. If his conduct falls short of



negotiations, the employee may be authorized to participate using the procedures set forth in subpart E.

DISQUALIFICATION BASED ON AN EMPLOYMENT ARRANGEMENT. An employee may not participate in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of anyone with whom he has an arrangement concerning future employment. In this case, an employee may be able to participate in a particular matter affecting a prospective employer only if he has received an individual waiver described in subpart D.

#### **SYNOPSIS OF SUBPART G - MISUSE OF POSITION**

USE OF PUBLIC OFFICE FOR PRIVATE GAIN. An employee shall not use his public office for his own private gain or for the private gain of friends, relatives or persons with whom he is affiliated in a nongovernmental capacity, or for the endorsement of any product, service or enterprise. In particular, an employee shall not use his Government position, title, or authority -

In a manner intended to induce another to provide any benefit to himself or to friends, relatives or affiliated persons;

In a manner that could be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another; or

To endorse any product, service or enterprise except in furtherance of statutory authority to do so, in accordance with agency programs to give recognition for achievement or to document compliance with agency standards or requirements.

USE OF NONPUBLIC INFORMATION. An employee shall not engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information to further his own private interests or those of another. Information that is "nonpublic" includes information the employee knows or reasonably should know:

Is routinely exempt from disclosure under the Freedom of Information Act or protected from disclosure by statute;

Is designated as confidential by an agency; or

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Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

USE OF GOVERNMENT PROPERTY. An employee has a duty to protect and conserve Government property and to use Government property only for authorized purposes. Authorized purposes are those for which Government property is made available to the public or those purposes authorized in accordance with law or regulation.

USE OF OFFICIAL TIME. Unless authorized in accordance with law or regulation to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. And, an employee shall not encourage, direct, coerce or request a subordinate to use official time to perform activities other than those required in the performance of official duties or those authorized in accordance with law or regulation.

#### **SYNOPSIS OF SUBPART H - OUTSIDE ACTIVITIES**

GENERALLY. In addition to the standards set forth in subpart H, an employee's outside employment and other activities must comply with all ethical requirements set forth in the subparts A through G of the regulation, including the requirement to avoid even the appearance of using public office for private gain. For example, the prohibition against use of Government property for unauthorized purposes would prohibit an employee from using the agency photocopier to reproduce documents for his outside organization.

RESTRICTIONS IMPOSED BY OTHER LAWS. An employee's outside employment and other activities must comply with applicable laws other than the Standards of Ethical Conduct. Several are listed in subparts H and I. Outside activities frequently raise questions about the following:

The restrictions in 18 U.S.C. 203 and 205 on employees engaging in representational activities before the United States;

The constitutional prohibition against accepting any office, title or compensation from a foreign government; and

The Hatch Act, which prohibits most employees' participation in certain partisan political activities.

PRIOR APPROVAL FOR OUTSIDE ACTIVITIES. When required by supplemental agency regulation, an employee shall obtain approval before engaging in outside employment or activities.

CONFLICTING OUTSIDE ACTIVITIES. An employee shall not engage in outside employment or activities prohibited by statute or by supplemental agency regulation, or that would materially impair the ability to perform his official duties by requiring his disqualification under subpart D or E.

RESTRICTIONS ON RECEIPT OF COMPENSATION. With certain exceptions, Presidential appointees to full-time noncareer positions shall not receive any outside earned income for outside employment or other outside activities performed during that appointment. Higher-level noncareer employees may not, in any calendar year, receive outside earned income which exceeds 15 percent of the rate of pay for Level II of the Executive Schedule. These noncareer employees also are prohibited from receiving any compensation for teaching without prior approval, serving as officers or board members of outside entities, practicing certain professions or being affiliated with firms or other entities that practice those professions.

SERVICE AS AN EXPERT WITNESS. In the absence of specific authorization, an employee shall not represent anyone other than the United States as an expert witness in any proceeding before a court or agency of the United States if the United States is a party or has a direct and substantial interest.

The restriction applies even though no compensation is received. A less restrictive standard applies to special Government employees.

TEACHING, SPEAKING AND WRITING. An employee shall not receive compensation for teaching, speaking or writing that is related to his official duties.

DEFINITION OF RELATED TO DUTIES. Teaching, speaking or writing is "related to an employee's official duties" if:

The activity is undertaken as part of his official duties;

The invitation to engage in the activity was extended primarily because of his official position.